



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: OCTOBER 28, 2022

IN THE MATTER OF:

Appeal Board No. 623135

PRESENT: MICHAEL T. GREASON, JUNE F. O'NEILL MEMBERS

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective October 11, 2021, on the basis that the claimant voluntarily separated from employment without good cause. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded

a full opportunity to be heard and at which testimony was taken. There were appearances on behalf of the claimant and the employer. By decision filed April 14, 2022 (), the Administrative Law Judge sustained the initial determination.

The claimant appealed the Judge's decision to the Appeal Board. The Board considered the arguments contained in the written statement submitted on behalf of the claimant.

FINDINGS OF FACT: The claimant worked for the employer, a hospital, as a nursing assistant II for approximately 14 years until September 25, 2021. The claimant was a member of a union in contractual relations with the employer. During the last three years of his employment, he worked the overnight shift.

On March 2, 2021, the claimant sought medical attention for hypertension and diabetes. The claimant's physician recommended that the claimant remain out of work from March 10, 2021 through April 14, 2021 to undergo neurological and cardiac evaluations, then return to light-duty work. Additionally, the

physician stated at that time that it was medically necessary for the claimant to work morning or afternoon shifts because working overnight exacerbated his symptoms. That same day, the claimant requested a transfer to the day or afternoon shift and applied for leave under the Family Medical Leave Act (FMLA).

On March 9, 2021, the claimant saw his physician and was provided a note directing him to remain on bed rest until April 5, 2021, then return to full duty work on April 6, 2021. This note did not recommend that the claimant work a different shift. On March 23, 2021, the claimant again saw his physician and was advised to remain out of work until April 14, 2021 for medical evaluations, then return to work full duty on April 14, 2021. This note also did not recommend that the claimant work a different shift. On April 6, 2021, the claimant saw his doctor again, and once more received a note stating that he could return to work full duty on April 14, 2021, without restrictions, with no mention of the need for a shift change.

The employer notified the claimant that his request to be transferred to the day or afternoon shift was denied because there were no current openings. The claimant returned to work on April 14 and continued to work the overnight shift. On May 25, 2021, he visited a hospital emergency room after experiencing confusion and vision loss.

The claimant worked the overnight shift until September 27, 2021, when he submitted a resignation notice stating that he was retiring, effective October 11, 2021. He did not state that he was retiring due to medical issues. The claimant did not intend to retire from the workforce but instead wanted to find new employment elsewhere. The claimant was not advised by his doctor to quit his job for medical reasons. Continuing work was available.

OPINION: The credible evidence establishes that the claimant did not resign due to health reasons. Instead, he resigned in order to retire from this employment and seek work elsewhere.

The claimant contends that his health was in decline because he had to work overnight shifts after his request for an earlier shift was denied five months earlier. However, he produced no evidence to show that at the time of his resignation, his health was still adversely affected by working at night. There is no evidence that he required any medical intervention after May 25, 2021. Further, when the claimant was released to return to full-duty work on

April 14, 2021, his doctor did not impose any medical restrictions nor indicated that a change of shift remained necessary. It is also significant that the claimant did not advise the employer that he was resigning due to medical issues; it is not credible that he would fail to state this if it in fact was true. In light of the foregoing, the claimant's admission that no doctor advised him to resign serves as additional support for finding that he did not resign for medical reasons. The cases he cited on appeal therefore are distinguishable; as such, they are not controlling in this matter.

The claimant intended to seek new employment after resigning his position with this employer. We have long held that resigning in order to retire, without a genuine intent to fully withdraw from the labor market, does not provide a claimant with good cause to end continuing work. Accordingly we conclude that the claimant's employment ended under disqualifying circumstances and that he was properly denied benefits.

DECISION: The decision of the Administrative Law Judge is affirmed. The initial determination, disqualifying the claimant from receiving benefits, effective October 11, 2021, on the basis that the claimant voluntarily separated from employment without good cause, is sustained.

The claimant is denied benefits with respect to the issues decided herein.

MICHAEL T. GREASON, MEMBER

JUNE F. O'NEILL, MEMBER